

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF MISSISSIPPI  
WESTERN DIVISION

LEON FELIX, JR.

PETITIONER

VS.

CIVIL ACTION NO. 5:11CV180-DPJ-FKB

CHRISTOPHER EPPS

RESPONDENT

ORDER

This cause came on this date to be heard upon the Report and Recommendation of the United States Magistrate Judge, after referral of hearing by this Court. Leon Felix, Jr. pled guilty to statutory rape and was originally sentenced to serve 10 years, with 10 years suspended, and 3 years supervised probation, for a total of 13 years. After an arrest for cocaine possession in violation of his probation, he was re-sentenced to serve 8 years of his 10 year sentence and 5 years of supervised probation, again, for a total of 13 years. Magistrate Judge Ball recommended dismissal of Felix's petition for writ of habeas corpus as untimely pursuant to 28 U.S.C. § 2244(d).

Judge Ball appropriately rejected Felix's argument the three-year limitation period to seek post-conviction relief in state court tolled the federal habeas limitations period. *See Pearson v. Mississippi*, No. 4:07cv83-HTW-LRA, 2007 WL 3254361, at \*2 (S.D. Miss. Oct. 15, 2007) (collecting cases). The bulk of Petitioner's Objections is devoted to his insistence that the cocaine did not belong to him and urges the Court to proceed to the merits of his petition. But Felix's petition is untimely, and he has not presented evidence of exceptional circumstances which would warrant equitable tolling. *See Felder v. Johnson*, 204 F.3d 168, 170–71 (5th Cir.2000) (equitable tolling limited to "rare and exceptional circumstances" and noting a mere claim of actual innocence does not constitute a rare and exceptional circumstance). Judge Ball

correctly concluded that the petition is time barred, and Petitioner's arguments to the contrary are not compelling.

The Court, having fully reviewed the Report and Recommendation of the United States Magistrate Judge entered in this cause, and being duly advised in the premises, finds that said Report and Recommendation should be adopted as the opinion of this Court.

IT IS, THEREFORE, ORDERED that the Report and Recommendation of United States Magistrate Judge F. Keith Ball be, and the same is hereby, adopted as the finding of this Court, and the same entire action should be dismissed with prejudice.

A separate judgment will be entered herein in accordance with the Order as required by Rule 58 of the Federal Rules of Civil Procedure.

**SO ORDERED AND ADJUDGED** this the 20<sup>th</sup> day of June, 2012.

s/ Daniel P. Jordan III  
UNITED STATES DISTRICT JUDGE